

SERVED: September 17, 1999

NTSB Order No. EA-4790

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 10th day of September, 1999

_____)	
JANE F. GARVEY,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-15179
v.)	
)	
LOUIS M. SMITH,)	
)	
Respondent.)	
_____)	

OPINION AND ORDER

Respondent has appealed, on the issue of sanction only, from the oral initial decision and order of Administrative Law Judge William A. Pope, II, rendered on August 27, 1998, at the conclusion of a two-day evidentiary hearing.¹ By that decision, the law judge affirmed the allegations set forth in the Administrator's order (filed as the complaint), specifically,

¹The initial decision is attached. Respondent filed an appeal brief and the Administrator filed a reply.

that respondent as maintenance controller for then ValuJet Airlines, violated section 43.13(a) of the Federal Aviation Regulations (FARs) by allowing an aircraft to depart that did not meet its Minimum Equipment List (MEL) requirements.² The law judge reduced the suspension of respondent's mechanic certificate with airframe and powerplant ratings from 90 to 60 days.³

Given the thorough and detailed exposition of the facts in the initial decision, a brief summary here will suffice. On May 31, 1997, respondent, who was a maintenance controller for ValuJet Airlines in Atlanta, Georgia, received a telephone call from the captain of a ValuJet DC-9 in Boston, Massachusetts, a short time before the aircraft's scheduled departure. The captain told him the crew oxygen bottle was either empty or extremely low and needed to be serviced. Respondent was unable

(..continued)

²Section 43.13 states, in pertinent part:

Performance rules (general).

(a) Each person performing maintenance, alteration, or preventive maintenance on an aircraft, engine, propeller, or appliance shall use the methods, techniques, and practices prescribed in the current manufacturer's maintenance manual or Instructions for Continued Airworthiness prepared by its manufacturer, or other methods, techniques, and practices acceptable to the Administrator, except as noted in § 43.16. He shall use the tools, equipment, and test apparatus necessary to assure completion of the work in accordance with accepted industry practices. If special equipment or test apparatus is recommended by the manufacturer involved, he must use that equipment or apparatus or its equivalent acceptable to the Administrator.

³The Administrator did not appeal the sanction reduction and, therefore, we do not address that issue.

to get in touch with the contract maintenance provider in Boston and testified that, after two more calls from the captain and an assertion by either the pilot or the dispatcher that a similar flight had been undertaken by the airline in the past, he felt "peer pressure" and agreed that it would be permissible for the flight to depart without operable crew oxygen if the aircraft remained below 10,000 feet. As respondent testified, although the ValuJet DC-9 MEL specified that a flight could take off without operable passenger oxygen if it remained below 10,000 feet, it also stated that the crew oxygen system must be operative. (Tr. at 273.) Nonetheless, he stated that he believed a flight without an operable crew oxygen system was permissible under the FARs and thus would not have been a violation for this flight.

The law judge affirmed the allegations contained in the Administrator's order, finding that the aircraft was operated in a condition that violated the "unmistakable" language of the ValuJet MEL. (Tr. at 341.) He determined that the 90-day sanction sought by the Administrator, although within the sanction range identified in the FAA's Sanction Guidance Table (FAA Order 2150.3A (1988), Appendix 4), was too lengthy when compared to precedent, and that there were "no notable aggravating factors" to distinguish the instant case. On this basis, he reduced the sanction to a 60-day suspension.

Respondent's appeal is limited to the propriety of the sanction imposed. He asserts that the law judge erred by

suspending respondent's certificate for a time period that is significantly greater than the sanction period received by the captain and the dispatcher, who he contends equally shared responsibility for the violation.

What respondent fails to acknowledge is that the others had different responsibilities and, no doubt, were charged with violations of different regulations.⁴ The instant case is independent of any against the pilot or dispatcher and thus, whatever they were charged with or sanction they received as the result of a settlement is irrelevant to these proceedings.

The Administrator met her requirement to prove the violation by a preponderance of the evidence. She justified the sanction sought through the Sanction Guidance Table and the testimony of FAA inspectors. While the basic set of facts is the same for the pilot, dispatcher and respondent, further comparison among their cases is not warranted. Each of the three had distinct duties and obligations. Further, to the extent that the pilot settled his case with the Administrator, the sanction he ultimately received is not germane to the proceeding. A comparison among holders of different types of certificates, some of whom settled their cases, others who self-disclosed and were cooperative, and others who steadfastly defended their actions is neither proper nor useful for sanction assessment purposes.⁵

⁴The evidence does not reveal what regulations the pilot and dispatcher were alleged to have violated, but it is unlikely that it was section 43.13(a), a maintenance regulation.

⁵Of significance to the Administrator is the fact that,

Matters of prosecutorial discretion are not ones that the Board is inclined to review. See, e.g., Administrator v. Adcock, NTSB Order No. EA-4507 at 4 (1996). The 60-day suspension is more than thoroughly supported by the facts of this case and consistent with both the Sanction Guidance Table and precedent. We have not been presented with an adequate reason to reduce the sanction further.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The initial decision and order is affirmed; and
3. The 60-day suspension of the respondent's mechanic certificate with airframe and powerplant ratings shall begin 30 days after the service date indicated on this opinion and order.⁶

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

(..continued)

early on, the pilot and dispatcher admitted their mistakes but respondent did not until the hearing.

⁶For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to FAR section 61.19(f).